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No. 287

In the Supreme Court of the United States

OCTOBER TERM, 1957

GERYS DESSALERNOS, PETITIONER

v.

JOSEPH SAVORETTI, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A) is reported at 244 F. 2d 178. The order of the District Court appears at pp. 45–46 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The petition for a writ of certiorari was filed on July 17, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether petitioner, who was ordered deported for failure to report as an alien, had to meet, in order to

be eligible for suspension of deportation, the ten-year residence requirement fixed by Section 244 (a) (5) of the Immigration and Nationality Act of 1952, rather than the seven-year requirement fixed by Section 244 (a) (1).

STATUTES INVOLVED

The Immigration and Nationality Act of 1952, 66 Stat. 163, provides in pertinent part:

Section 241 (a), 8 U. S. C. 1251 (a):

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * *
>
> (5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266 (c) of this title, or under section 36 (c) of the Alien Registration Act, 1940, * * *.
>
> * * * * *
>
> (9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;
>
> * * * * *

Section 244 (a), 8 U. S. C. 1254 (a):

> As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act [June 27, 1952]; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19 (d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

* * * * *

(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241 (a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act [June 27, 1952], is deportable under paragraph (2) of section 241 (a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the as-

sumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence.

Section 265, 8 U. S. C. 1305:

Every alien required to be registered under this title, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this Act, or on the first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change. * * *

STATEMENT

The petition seeks review of the judgment of the Court of Appeals for the Fifth Circuit, which affirmed the order of the United States District Court for the Southern District of Florida dismissing petitioner's complaint for a declaration that he was entitled to

have his application for suspension of deportation considered by the Attorney General pursuant to Section 244 (a) (1) of the Immigration and Nationality Act of 1952, 8 U. S. C. 1254 (a) (1), *supra,* pp. 2–3.

Petitioner, a native and citizen of Greece, entered the United States on March 11, 1947, as a seaman on a certificate of admission which permitted a stay of not over 29 days (R. 18–19). He illegally remained in the United States thereafter. In 1952 he registered under the provisions of the Alien Registration Act, but thereafter he willfully and without reasonable excuse failed to register annually as required by Section 265 of the 1952 Act (8 U. S. C. 1305, *supra,* p. 4) (R. 21–24).

In deportation proceedings commenced in 1954, petitioner was found deportable under Section 241 (a) (9), *supra,* p. 2, as a nonimmigrant who failed to comply with the conditions of such status, and under 241 (a) (5), *supra,* p. 2, as an alien who failed to comply with the registration requirements of Section 265. Petitioner's application for suspension of deportation was denied by the Special Inquiry Officer on the ground that, since petitioner was single and had no one in the United States dependent on him for support; he did not meet the hardship requirement essential to eligibility for suspension of deportation; and further that he failed to meet the ten-year residence requirement for eligibility (R. 42–43) fixed by Section 244 (a) (5) for persons deportable under Section 241 (a) (5).

Before the Board of Immigration Appeals, petitioner contended that he was eligible for suspension

of deportation under the provisions of Section 244 (a) (1) which imposes only a seven-year residence requirement. The Board ruled that the application had to be considered under Section 244 (a) (5), with its ten-year requirement (R. 10–12). The Board found petitioner ineligible for such relief "since among other things, he does not meet the physical requirements of section 244 (a) (5)" (R. 12).

The District Court complaint attacked the ruling that petitioner's application for suspension could not be considered under Section 244 (a) (1) (R. 1–5), alleging, in paragraph 8, that he "does qualify under all the provisions of this section" (R. 3). The answer denied those portions of paragraph 8 "alleging the impropriety of the administrative denial of petitioner's application for suspension of deportation" (R. 14).

At the trial, it was stipulated by the parties that "there was no issue of fact to be tried by the Court and that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer during the course of the administrative proceedings * * * correctly stated the true factual situation" (R. 45). It was also orally stipulated that the sole question to be decided by the court was one of law, as follows (R. 45):

> Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244 (a) (5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from pre-

senting for consideration his application for suspension of deportation under section 244 (a) (1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?

Both the District Court (R. 45–46) and the Court of Appeals (Pet. App. 1a–10a) agreed with the Board of Immigration Appeals that petitioner's application for suspension could not be considered under Section 244 (a) (1).

ARGUMENT

Petitioner was found deportable because, among other things, he willfully violated the alien registration requirements of Section 265 of the Immigration and Nationality Act of 1952, during January 1953 and January 1954 (R. 16–17, 41–44). Section 244 (a) (5), which specifically covers eligibility for suspension of deportation under such circumstances, imposes as a condition ten-years of continuous residence from the date of such a deportable act. *Supra,* pp. 2–4. Petitioner admittedly cannot meet that requirement. Section 244 (a) (1), which has only a seven-year residence requirement, does not refer to this particular violation but is a more general provision relating to deportability "* * * under any law of the United States * * *." *Supra,* pp. 2–3. The issue presented in this case is whether petitioner can have his application for suspension considered under subsection (1) when he admittedly cannot meet the requirements of

subsection (5).[1] The courts below properly held that he could not.

In the first place, "it is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling". *Kepner* v. *United States,* 195 U. S. 100, 125; *Baltimore National Bank* v. *State Tax Commission of Maryland,* 297 U. S. 209, 215. Since petitioner falls very specifically within the purview of subdivision (5), his statutory eligibility for suspension of deportation was properly determined thereunder, and not under the much more general requirements of subdivision (1).

Moreover, it seems clear that Congress intended that an applicant for suspension of deportation who violates the Alien Registration Act should have his statutory eligibility for such relief determined only

[1] It was stipulated in the District Court that this issue of law was the sole question presented by the case. We doubt the appropriateness of that stipulation in view of the administrative record on which the case rests. The Special Inquiry Officer based his decision against eligibility primarily on the ground that petitioner, who is single and has no one dependent on him for support, does not meet the test of "exceptional and extremely unusual hardship" imposed by the 1952 Act for eligibility for suspension of deportation (R. 42–43). This condition applies to applications under subsection (1) as well as under subsection (5). While the Board of Immigration Appeals did not expressly advert to this finding by the Special Inquiry Officer, it did state that it found nothing which "would cause us to make any change in the decision of the special inquiry officer" (R. 12). In view of this ruling on the hardship condition, the issue decided by the courts below would seem to be, in reality, academic.

under subdivision (5). All the subdivisions of Section 244 (a) are meant to be mutually exclusive.[2] The possibility of overlap between subdivision (1) and (5) was almost completely foreclosed by the express language of the statute. Thus, aliens ineligible under Section 19 (d) of the 1917 Act (and hence under subdivision (1) of Section 244 (a) of the 1952 Act) correspond generally to those classes specifically covered by subdivision (5) of Section 244 (a). Although a like exclusion from subdivision (1) of applicants for suspension who are deportable for registration violations is not expressly spelled out in the Act, the reasonable analysis is that Congress intended such an exclusion since it expressly included that group in subdivision (5).

Other factors support the same conclusion. Section 241 (a) (5) of the 1952 Act (*supra*, p. 2) prescribes deportation of those aliens violating the regis-

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[2] As the court below pointed out (Pet. App. 8a, 244 F. 2d at 183, n. 7):

"Paragraph (1) excludes all those in paragraphs (2)–(4) and part of paragraph (5) by means of the June 27, 1950, cut-off date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraphs (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are not incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1) * * *".

tration provisions of the new law and for the first time made deportable those previously convicted for violating the registration requirements of the old law.[3] Although obviously concerned with these violators, Congress did not wish to foreclose suspension of their deportation altogether. Rather, it expressly required that they meet the more stringent requirements of subdivision (5). Under that provision, a ten-year continuous residence after commission of the violation is required for statutory eligibility; under subdivision (1), there is only a seven-year residence requirement. Under (5), a concurrent Congressional resolution is required to cancel deportation proceedings where suspension is approved by the Attorney General; under (1), no such Congressional approval is necessary (Section 244 (c)): To say that an applicant may, at his option, meet instead the less severe conditions of subdivision (1) is to defeat the Congressional purpose.

In addition, subdivision (5) is the only one which can fully deal with suspension of deportation whether the registration violation falls under the old law or under the 1952 Act. The terms of the subsection can apply both prospectively and retrospectively. Conversely, subdivision (1) is inappropriate to prospective violations since it is unavailable after December 24, 1957, and subdivisions (2)–(4) are in-

[3] Prior to the 1952 Act, aliens who violated the registration and reporting provisions of the 1940 Alien Registration Act, 54 Stat. 673, 675, as amended, 8 U. S. C. 452, 456 (1946 ed.), while subject to criminal sanctions (54 Stat. 675, 8 U. S. C. 457 (1946 ed.)), were not made deportable for that reason.

appropriate to many retroactive violations since those provisions are inapplicable to aliens entering prior to June 27, 1950. Subdivision (5) is the only one with no cut-off date.[4] It seems hardly likely that Congress, while so gravely concerned with registration violations as to make such offenses deportable for the first time whether committed before or after the 1952 Act, would, when deciding on the suspension requirements in those cases, intend that an applicant could nevertheless obtain suspension under the less stringent conditions of subdivision (1). And, as the Court of Appeals points out (Pet. App. 9a–10a), petitioner's construction of the statute would arbitrarily discriminate between aliens, committing registration offenses under the new Act, who entered the country before June 26, 1950, and those who entered thereafter.

Finally, there is no conflict of circuits. The contrary district court rulings, referred to by petitioner, in *Sevitt* v. *Del Guercio,* 150 F. Supp. 56 (S. D. Cal.), and *Cestaro* v. *Ryan,* decided on June 27, 1957 (D. Conn.), are presently pending on appeal to the Courts of Appeals for the Ninth and Second Circuits.

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[4] To argue that subdivision (1) is a "savings clause" and applies exclusively to pre-1950 entrants regardless of the deportable act and that therefore petitioner, who entered prior to 1950, falls solely within that provision is unnaturally to restrict suspension of deportation. For, on that theory, it would follow that a pre-1950 entrant found deportable for violating Section 265 would be debarred from suspension of deportation even if he were eligible under subdivision (5), where his application was made after the cut-off date (December 24, 1957) contained in subdivision (1).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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BRIEF FOR THE RESPONDENT

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JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The petition for a writ of certiorari was filed on July 17, 1957, and granted on October 14, 1957 (355 U. S. 809). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).